Hovsepian v. Apple, Inc. Doc. 203

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re ACACIA MEDIA TECHNOLOGIES CORPORATION	Case No. 05 CV 01114 JW **DECLARATION OF ALAN P. BLOCK IN SUPPORT OF PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S RESPONSE TO THE ROUNDS 1 AND 2 DEFENDANTS' POST-HEARING BRIEF RE THE CONSTRUCTION OF THE TERM "RECEIVING SYSTEM"**

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I, Alan P. Block, hereby declare as follows:

1. I am a member of the law firm of Hennigan, Bennett & Dorman LLP, counsel of record for plaintiff Acacia Media Technologies Corporation in this case. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

2. A true and correct copy of the Round 3 Defendants' Proposed Construction is attached hereto as Exhibit 1.

3. A true and correct copy of United States Patent No. 5,415,398 is attached hereto as Exhibit 2.

Executed this 14th day of August, 2006, at Los Angeles, California.

/s/ Alan Block

Alan P. Block

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EXHIBIT 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In Re

ACACIA MEDIA TECHNOLOGIES CORPORATION

Case No. C-05-01114 JW

TWC/CSC PROPOSED CONSTRUCTIONS AND CITATIONS TO THE INTRINSIC RECORD FOR (1) CLAIM TERMS FROM THE '863 PATENT AND (2) RECONSIDERATION CLAIM TERMS FROM THE '992 PATENT

Time Warner Cable, Inc. ("TWC") and CSC Holdings, Inc. ("CSC") jointly set forth their proposed claim constructions and supporting citations to the intrinsic record for those claim terms and phrases from U.S. Patent No. 5,550,863 that have been identified as requiring construction and those claim terms and phrases previously considered by the Court from 5,132,992[1] on which TWC and CSC request to, and have been granted permission by the Court to, be heard. TWC and CSC also incorporate by reference any citations to the intrinsic record set forth by any other party in this action. TWC and CSC reserve the right to modify these proposed constructions.[2]

[1] TWC and CSC have not sought reconstruction on any terms from U.S. Patent No.6,144,702 pursuant to the Court's instructions at the February 19, 2006 scheduling conference not to do so at the present time. TWC and CSC have also not sought reconsideration of any claim terms as used in claims 47-53 of the '992 patent that were previously construed by the Court because Acacia has agreed not to assert those claims against defendants. (D.I. 173, *Acacia Media Technologies Reply In Support of Legal Memorandum Re Definitions of Claim Terms from the '992 and '275 Patents* at 57.)

[2] TWC and CSC also rely on all figures which relate to the cited passages from the intrinsic evidence. In addition, TWC and CSC rely on the language of the claims in which the term appears and any claims from which it depends or any claims which depend from it.

#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
1	"transmitting compressed, digitized data representing a complete copy of at least one item of audio/video information at a non-real time rate from a central processing location" '863 patent – 14 Support: '863 patent – Abstract; 1:67-2:4; 2:1-5; 2:48-3:14; 3:39-40; 3:60-67; 4:1-35; 4:45-56; 4:64-5:9; 5:19-33; 6:49-7:34; 8:44-9: 65; 11:24-26; 15:20-29; 16:9-16; 17:25-34; 17:62-63; 18:1-45; 18:69-19:17; Figs 1a, 1b, 1c, 1d, 1f, 2a, 2b, 7; '863 Pros. History, 05/30/95 Amendment at 4; '863 Pros. History, 08/22/95 Office Action at 6; '863 Pros. History, 12/22/95 Amendment at 6; Parties Stipulated Definitions for Claim Terms from the '992 and '275 Patents, term 2. *See also* intrinsic evidence cited in 9 below.	"Central Processing Location" means: The single (one and only one) location of the transmission system, at which all of the processing of audio/video information by the transmission system is exclusively performed and from which a plurality "local distribution systems" directly and exclusively receive processed audio/video information. The step of "transmitting compressed, digitized data representing a complete copy of at least one item of audio/video information at a non-real time rate" to at least one "local distribution system" must be exclusively performed at this single central processing location, as must include the following steps: "inputting an item having information into the transmission system;" "assigning a unique identification code to the item having information;" "formatting the item having information as a sequence of addressable data blocks;" "compressing the formatted and sequenced data blocks;" "storing, as a file, the compressed, formatted, and sequenced data blocks with the assigned unique identification code;" and "sending at least a portion of the file at the non-real time rate to the local distribution system." "a complete copy of at least one item of audio/video information" means a copy of all of the audio/video information that is contained on one physical item. "non-real time rate" means a transmission rate that is faster than the rate at which playback occurs (the rate at which signals are sent to a device, such as an audio amplifier and/or television, on which video information can be displayed and/or audio information heard). "compressed, digitized data" means the compressed and sequenced addressable data blocks [See construction 51 of "sequence of addressable data blocks" below; see construction 9 of "local distribution system" below]
2	"wherein the transmitting step comprises" '863 patent – 14 Support: *See* 1 above, and 3-8 below	"The transmitting step" refers to the step of "transmitting compressed, digitized data representing a complete copy of at least one item of audio/video information at a non-real time rate from a central processing location." All of the steps which comprise "the transmitting step" must be performed at the central processing location.

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
3	"inputting an item having information into the transmission system" '863 patent - 14, 17 Support: '863 patent – 2:60-3:11; 5:63-66; 6:5-18; 6:49-56; 17:32-35; 17:62-67; 18:1-7; Figs 2a, 2b, 7; '992 Pros. History, 09/30/91 Amendment at 2, 5. *See also* intrinsic evidence cited in 46 below.	Placing a physical object containing audio/video information into the source material library of the transmission system. "The transmission system" must be contained at one, and only one, location. The location of "the transmission system" is the "central processing location." [See construction 44 of "transmission system" below]
4	"assigning a unique identification code to the item having information" '863 patent - 14, 17 Support: '863 patent – 6:30-48; 6:52-7:18; 7:35-43; 9:65-10:11; 10:45-11: 21; 12:27-46;; 17:62-18:19 Figs. 2a, 7; '992 Pros History, Petition to Make Special at 3; '720 Pros. History, 06/07/99 Amendment at 2, 6-7	"Assigning a unique identification code to the item having information" means "assigning a one-of-a-kind identifier to the item having information that identifies the item." This step must be performed by the identification encoder of the transmission system, and the identification encoder must also transform the information in the items into an analog or digital format. [See construction 47 of "items having information" below]
5	"formatting the item having information as a sequence of addressable data blocks" '863 patent - 14, 17 Support: '863 patent – 6:49-7:34; 7:50-8:12; 8:15-19; 18:8-19; Figs. 2a, 7, 8a, 8b, 8c, 8d, 8e	"Formatting the item having information as a sequence of addressable data blocks" means "operating on the physical object itself to create a sequence of addressable data blocks" This step must be performed by the transmission system at the central processing location. [See construction 51 of "sequence of addressable data blocks" below.]
6	"compressing the formatted and sequenced data blocks" '863 patent - 14, 17 Support: 6:58-62; 7:64-66; 8:52-9:65; 10:23-26; 10:36-39; 18:20-25; 18:60-63; 19:11-15; Figs. 2a, 7	This step must be performed by the transmission system at the central processing location. The sequence of the formatted data blocks must be maintained by the compression process. "compressing the formatted and sequenced data blocks" means "compressing the sequence of addressable data blocks such that the ordering is maintained." [See construction 51 of "sequence of addressable data blocks" below.]

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
7	"storing, as a file, the compressed, formatted, and sequenced data blocks with the assigned unique identification code" '863 patent – 14 Support: '863 patent – 9:66-10:24; 18:26-33; Figs. 2a, 7	This step must be performed by the transmission system at the central processing location. [See construction 52 of "storing, as a file, the compressed, formatted, and sequenced data with the assigned unique identification code" below.]
8	"sending at least a portion of the file at the non-real time rate to the local distribution system" '863 patent – 14 Support: '863 patent – Abstract; 2:1-5; 15:20-29; 16:9-16; 18:34-52; Figs. 2b, 6, 7	The Round 3 Defendants agree with Acacia that the phrase "sending at least a portion of the file at the non-real time rate to the local distribution system" means the act of "transmitting electronically or optically at least a portion of the file at the non-real time rate to the local distribution system." This step must be performed by the transmission system at the central processing location. [See construction 1 of "non-real time rate" above; see construction 9 of "local distribution system" below.]
9	"receiving the transmitted compressed, digitized data representing a complete copy of the at least one item of audio/video information, at a local distribution system remote from the central processing location" '863 patent - 14, 17 Support: 3:60-67; 4:1-5:7; 5:19-40; 16:9-16; 17:19-39; 18:33-52; Figs. 1a, 1b, 1c, 1d, 1e, 1f, 7; '863 Pros. History, 05/30/95 Amendment at 5; 3-4, 08/22/95 Office Action at 3-5, 720 Pros. History, 11/21/97 Amendment at 1-2; '720 Pros. History, 11/07/99 Reply and Amendment at 8	The Round 3 defendants agree with Acacia's construction of "local distribution system" as "an assembly of elements, hardware and software, that function together to receive transmitted data, store the data, decompress the data, and transmit the data to at least one subscriber receiving station."
10	"storing the received compressed digitized data representing the complete copy of the at least one item at the local distribution system" '863 patent - 14, 17 Support: '863 patent – 4:36-41; 4:66-5:7; 5:19-40; 17:32-39; 18:46-52; Figs. 1f, 6	All of the received compressed, sequenced addressable data blocks representing the complete copy of the at least one item is in the same storage device in the local distribution system at the same time. [See construction 51 of "sequence of addressable data blocks" below.]

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
11	"in response to the stored compressed, digitized data, transmitting a representation of the at least one item at a real-time rate. . ." '863 patent – 14 Support: '863 patent –1:22-58; 2:6-10; 2:48-53; 2:60-64; 3:53-59; 4:1-12; 5:8-45; 7:27-35; 11:52-12:3; 13:47-54; 13:60-14:26; 14:33-51; 16:46-54; 17:18-27; 17:32-51; 17:61-67; 18:46-52; '992 Pros. History: Petition to Make Special at 2, 7, 21, 24-26; '992 Pros. History: 9/30/91 Amendment at 23; '992 Pros. History: 12/26/91 Amendment at 11. '863 Pros. History, 12/22/95 Amendment at 6	Information in the "stored compressed, digitized data" triggers the local distribution system to send "a representation of the at least one item at a real-time rate to at least one of a plurality of subscriber receiving stations." "real time rate" means a transmission rate that is the same as the rate at which playback occurs. [See construction 1 of "non-real time rate" above]
12	"transmitting a representation to at least one of a plurality of subscriber receiving stations coupled to the local distribution system" '863 patent – 14 Support: '863 patent – Abstract, 1:50–2:14; 2:48-65; 3:52-59; 4:1-13; 4:43-51; 5:8-40; 7:27-34; 8:24-25; 11:52-13:3; 13:28–14:26; 14:45-51; 14:56-60; 16:17-22; 16:30-32; 16:46-54; 17:18--61; 18:1-7; 18:45-52; Figs. 1f, 6; '992 Prosecution History: September 30, 1991 Remarks at 22-23; *see also* Markman I at 22-23.	A "subscriber receiving station" is a subscriber device on which playback can occur - a device which itself can display video content or play audio content directly to a user, such as a television or radio. Two or more "subscriber receiving stations" must be "coupled to" the local distribution system. The Court has previously construed "coupled to" to mean "directly connected to or attached to." One example the Court gave as evidencing that two elements are not "coupled to" each other is the need to use a disk to transfer information from one to the other. [*See*, Markman I at 22-23.]
13	"decompressing the compressed, digitized data representing the at least one item of audio/video information ... wherein the decompressing step is performed in the local distribution system to produce the representation of the at least one item for transmission to the at least one subscriber station" '863 patent – 14 Support: '863 patent – Abstract, 4:42-50; 4:63-5:7;17:39-52; Figs. 1f, 6	The "compressed, digitized data" is decompressed in the local distribution system to produce the "representation" which is then sent to "the at least one subscriber station" in uncompressed digital form.

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
14	The order of the steps of claim 14 of the '863 patent. '863 patent – 14 Support: '863 patent – Entire specification and Figs. 2a, 2b, 3, 5, 6, 7	The steps of claim 14 are performed in the following order: "inputting an item..." "assigning a unique identification code..." "formatting the item ..." "compressing the item ..." "storing, as a file, ..." and "sending at least a portion ..." which are performed as part of the step of "transmitting compressed ..." The remaining steps are performed subsequent to the step of "transmitting compressed ..." in the following order: "transmitting compressed ..." "receiving the transmitted ..." "storing the received ..." "decompressing ..." "in response to the stored ..." Each step of claim 14 begins and occurs only after a prior step or steps have been completed.
15	"wherein the inputting step comprises inputting the item having information as blocks of digital data" '863 patent - 15, 18 Support: N/A	Indefinite.
16	"wherein the inputting step comprises: inputting the item having information as an analog signal; and converting the analog signal to blocks of digital data" '863 patent - 16, 19 Support: N/A	Indefinite.

#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
17	"formatting items of audio/video information as compressed digitized data at a central processing location" '863 patent – 17 Support: '863 patent – 6:15-18; 6:49-7:34; 18:1-19; Figs 2a, 2b, 7. *See also* intrinsic evidence cited in 9 below.	"Central Processing Location" means: The single (one and only one) location of the transmission system, at which all of the processing of audio/video information by the transmission system is exclusively performed and from which a plurality "local distribution systems" directly and exclusively receive processed audio/video information. The step of "formatting items of audio/video information as compressed digitized data" must be exclusively performed at this single central processing location, as must the following steps: "transmitting compressed, digitized data representing a complete copy of at least one item of audio/video information" to the "local distribution system"; "inputting an item having information into the transmission system"; "assigning a unique identification code to the item having information"; "formatting the item having information as a sequence of addressable data blocks;" and "compressing the formatted and sequenced data blocks." "compressed, digitized data" means the compressed, sequence of addressable data blocks [defined below] In addition: The audio/video information from the item is examined to determine if it is in analog or digital form. If the audio/video information in the item is in analog form, it is converted into digital form and then compressed. If the audio/video information in the item is already in digital form, then it is compressed. The "digitization" of analog information occurs before the "sequence of addressable data blocks" are created, but after the step of "inputting an item having information into the transmission system." [See construction 9 of "local distribution system" above]
18	wherein the formatting step comprises: '863 patent – 17 Support: '863 patent – *See* 3-6, 17 above and 19, 20 below	The "formatting step" refers to the step of "formatting items of audio/video information as compressed digitized data at a central processing location" All of the steps which "the formatting step" comprises must be performed at the central processing location.

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
19	"transmitting the compressed, digitized data representing a complete copy of the at least one item of audio/video information from a central processing location" '863 patent – 17 Support: '863 patent – Abstract; 2:1-5; 2:48-50, 3:39-40; 3:60-67; 4:1-35; 4:45-56; 5:19-29; 6:49-7:34; 8:44-9: 65; 11:24-26; 15:20-29; 16:9-16; 17:62-63; 18:1-25; 18:34-45; Figs 1a, 1b, 1c, 1d, 1f, 2a, 2b, 7; Parties Stipulated Definitions for Claim Terms from the '992 and '275 Patents, term 2	Sending the compressed, sequence of addressable data blocks representing a copy of all of the audio visual information of the at least one physical object from the transmission system at the central processing location [See construction 51 for "sequence of addressable data blocks" below; see construction 17 for "central processing location" above]
20	"using the stored compressed, digitized data to transmit a representation of the at least one item to at a plurality of subscriber receiving stations coupled to the local distribution system" '863 patent – 17 Support: '863 patent – N/A	Indefinite.
21	The order of the steps of claim 17 of the '863 patent. '863 patent – 17 Support: '863 patent – Entire specification and Figs. 2a, 2b, 3, 5, 6, 7	The steps of claim 17 are performed in the following order: "inputting an item ..." "assigning a unique identification code ..." "formatting the item ..." and "compressing the formatted ..." which are performed in order as part of the step of "formatting items ..." The remaining steps are performed subsequent to the step of "formatting items" in the following order: "transmitting compressed, digitized data ..." "receiving the transmitted compressed ..." "storing the received compressed ..." "using the stored ..." Each step of claim 17 begins and occurs only after a prior step or steps have been completed. [See also additional ordering as set forth in construction 17 above]

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
44	"transmission system" *Previously-construed term* '992 patent – 19, 41 Support: '992 patent – 3:28-30; 3:50-58; 4:10-63; 5:10-11:53; 12:28-15:32; 15:55-17:24;17:44-66; Figs. 1a-g, 2a, 2b	A system as depicted in Fig. 2 (2a and 2b) of the Yurt patents and . which must include the following components interconnected in the order identified: a source material library (element 111 of Fig. 2a), an identification encoder (element 112 of Fig. 2a), a conversion means (element 113 of Fig. 2a), a time encoder (element 114 of Fig. 2a), a pre compression processor (element 115 of Fig. 2a), a compressor (element 116 of Fig. 2a), a compressed data storage means (element 117 of Fig. 2a), a compressed data library (element 118 of Fig. 2b), a transmission format means 119 (element 119 of Fig. 2b), and a transceiver or transmitter 122 (element 122 of Fig. 2b). [See construction 46 for "source material library" below]
45	"reception system" and "receiving system" *Previously-construed term* '992 patent – 19, 41 Support: '992 patent – 3:24-28; 3:38-40; 3:50-5:58; 6:23-34; 7:35-43; 10:31-45; 11:5-53; 14:64-15:22; 15:33-46; 16:38-44; 17:1-18:45; 19:30-36; Figs. 1a-g, 6; '992 Pros History, Paper No. 4, Petition to Make Special at 2, 3	A system which receives information, either electrically or optically, directly from a transmission system.
46	"storing items having information in a source material library" *Previously-construed term* '992 patent – 41 Support: '992 patent – 2:26-48; 2:62-3:14; 5:66-6:34; 6:62-64; 7:35-43; 15:3-22; 17:54-18:8; 18: 14-21; 19:44-56; Fig. 2a; '992 Pros History, Paper No. 4, Petition to Make Special at 2-5, 7, 10-16, 21-23, 25-26; Amendment 10/1/91 at 2, 5, 7, 18-19, 21, 25; '275 Pros. History: Amendment 1/12/93 at 1-3; '863 Pros. History: Amendment 12/22/95 at 1	a "source material library" is a device which i) stores different types of physical objects containing information, including but not limited to audio recordings, still pictures, files of documents, books, computer tapes, computer disks, documents of various sorts, musical instruments, and other physical objects; and ii) is capable of automatically transferring a physical item containing information to an identification encoder in response to an electronically-received request which identifies the physical item containing information. A source material library must be capable of performing this function with physical items of any of the media types described in (i) above. "storing items" means "adding physical objects to an existing collection"

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
47	"items containing information" (and the related term "items having information") *Previously-construed term* '992 patent – 19, 41 Support: '992 patent – 3:58-60; 5:26-28; 5:34-45; 5:66-6:34; 6:55-68; 7:44-55; 10:46-54; 10:66-11:4; 11:22-28; 18:50-52; '992 Pros. History, 9/30/91 Amendment at 2, 5. See also intrinsic evidence cited in #46 above.	"items having information" are physical objects containing information
48	"remote location" *Previously-construed term* '992 patent – 19, 41 Support: '992 patent – 1:62-66; 2:26-29; 2:46-61; 4:10-18; 15:61-65; 18:47-50; Figs. 1d-1g; '992 Pros History, Paper No. 4, Petition to Make Special at 2, 8; '720 Pros. History, Paper No. 3, Preliminary Amendment at 3; '720 Pros. History, Paper No. 4, Office Action at 2; '720 Pros. History, Paper No. 7, Response to Office Action at 2; '720 Pros. History, Paper No. 8, Office Action at 4; '720 Pros History, Paper No. 10; Amendment C at 1-2, 6; '720 Pros. History, Paper No. 15, Office Action at 2-3; '720 Pros. History, Paper No. 18, Amendment D at 2, 6-8	"Remote location" means: positions or sites distant in space from both the transmission system and from any other remote location
49	"retrieving the information in the items from the source material library" *Previously-construed term* '992 patent – 41 Support: '992 patent – See intrinsic evidence cited in 46 above.	An electronically transmitted request from within the transmission system, which identifies the physical object containing information, is sent to the source material library. This request causes the source material library to automatically transfer the physical item to the identification encoder.

#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
50	"assigning a unique identification code to the retrieved information" *Previously-construed term* '992 patent – 41 Support: '992 patent – 6:35-47; 6:58-64; 10:17-30; 10:66-11:39; 18:46-19:4; Fig. 2a; '992 Pros History, '992 Pros. History, 10/01/91 Amendment at 20, Paper No. 4, Petition to Make Special at 3; '720 Pros. History, Paper No. 18, Amendment D at 2, 6-7	"Assigning a unique identification code to the retrieved information" means "assigning a one-of-a-kind identifier to the information received from an item that identifies the retrieved information through the conversion, ordering, compression, and storing process." This step must be performed by an identification encoder, and the identification encoder must also transform the information in the items into an analog or digital format.
51	"placing the formatted data into a sequence of addressable data blocks" *Previously-construed term* '992 patent – 41 Support: '992 patent – 6:35-54; 7:59-8:56; 9:9--57; 10:17-30; 10:46-65; 12:8-27; 16:45-52; 17:1-24; 17:67-18:8; 18:60-19:17; 19:37-20:5; Figs. 2a, 8a-e '992 Pros. History: Amendment 10/1/91 at 19-20, 23-24; Office Action 12/10/91 at 2; 12/20/91 Interview Summary; Amendment 12/26/91 at 10-11; '863 Pros. History: Amendment 5/12/94 at 2-11; Office Action 12/30/94 at 4-5; Amendment 5/30/95 at 1-6; Office Action 8/22/95 at 3-6; Amendment 2/23/96 at 2-4.	"Addressable" means that the storage location for each data block is known so that the transmission system can retrieve any individual data block by using its storage location. A "data block" is a unit of information consisting of identification codes, data and error-checking codes. A "sequence" is an order. A "sequence of addressable data blocks" means an order of units of information (consisting of identification codes, data and error-checking codes) for which the storage location of each unit of information is known so that the transmission system can retrieve any individual unit of information by using its storage location.
52	"storing, as a file, the compressed, formatted, and sequenced data with the assigned unique identification code" *Previously-construed term* '992 patent – 41 Support: '992 patent – 10:17-45; 12:35-68; 13:9-28; 19:11-17; Fig. 2b' '992 Pros. History, Paper No. 4, Petition to Make Special at 3, 4	"storing, in a single file, both (1) the compressed, formatted, and sequenced data; and (2) the unique identification code assigned to (1).

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#	Patent Claim Term/Intrinsic Support	Round 3 Defendant's Construction
53	"retrieve" *Previously-construed term* '992 patent – 41 Support: D.I. 124, *Markman I* at 13.	The Court gives the term "retrieve" its ordinary meaning -- "to get something back"

Dated: June 9, 2006

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EXHIBIT 2

US005415398A

United States Patent [19]

[11] Patent Number: 5,415,398

[45] Date of Patent: May 16, 1995

Eggiman

[54] **SOFTBALL BAT**

[76] Inventor: **Michael D. Eggiman**, 31155 NW. Milne St., Hillsboro, Oreg. 97124

[21] Appl. No.: **257,943**

[22] Filed: **Jun. 10, 1994**

Related U.S. Application Data

[63] Continuation of Ser. No. 62,307, May 14, 1993, abandoned.

[51] **Int. Cl.**^{6} **A63B 59/06**

[52] **U.S. Cl.** .... **273/72 A**

[58] **Field of Search** .... 273/67 R, 72 A, 72 R, 273/268, 73 R

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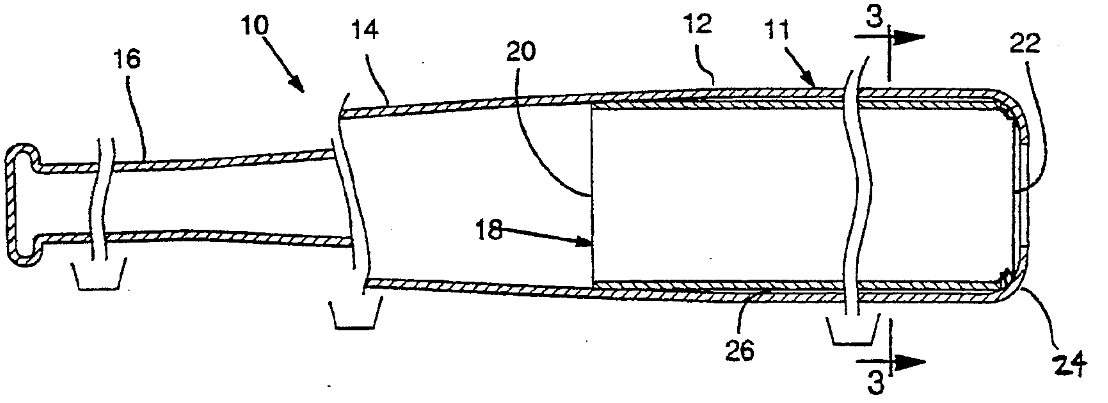
[57] **ABSTRACT**

A tubular aluminum bat frame is provided with a large-diameter impact portion, an intermediate tapering portion, and a small-diameter handle portion. A tubular insert is suspended within the impact portion by interference fits at each insert end. A first interference fit is achieved by forcing the first end of the insert into the tapering portion of the bat frame. The second interference-fit is then formed by curling the end of the impact portion over upon the second end of the insert. A gap exists along the length of the suspended insert separating the insert from the interior of the impact portion. The gap is filled with grease to facilitate relative movement between the insert and the tubular frame when a ball is batted.

18 Claims, 1 Drawing Sheet



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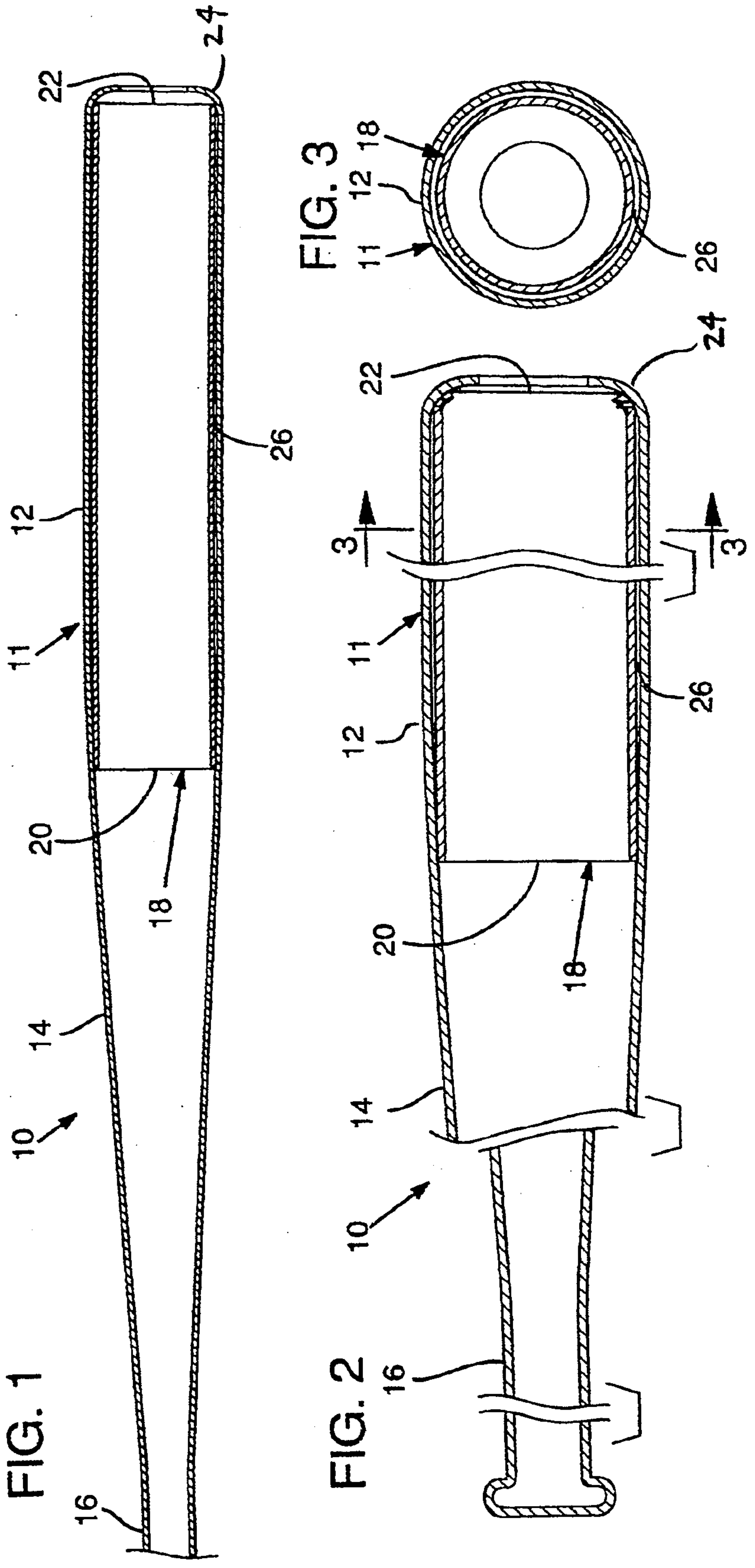
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FIG. 1
FIG. 2
FIG. 3

SOFTBALL BAT

This application is a continuation of application Ser. No. 08/062,307, abandoned, filed on May 14, 1993.

FIELD OF THE INVENTION

The present invention relates to softball and baseball bats and more particularly relates to the use of structural members inside such bats to improve their impact response.

BACKGROUND AND SUMMARY OF THE INVENTION

Tubular metallic softball (and baseball) bats are well known in the art. A familiar example is a tubular aluminum bat. Such bats have the advantage of a generally good impact response, meaning that the bat effectively transfers power to a batted ball. This effective power transfer results in ball players achieving good "slugging" distances with batted balls. An additional advantage of such aluminum bats is the improved durability over crack-prone wooden bats.

Even though today's aluminum bats perform well, there is an ever-continuing quest for bats with a better "slugging" capacity. Accordingly, one important need is to optimize the impact response of a bat. Generally speaking, impact response is best when a bat undergoes a greatest elastic deflection, before rebounding with a greatest force in the shortest amount of time. Optimization of these three factors increases the "spring" of a ball off a bat, yielding a bat with a superior power transfer and facility for "slugging."

Constraining the design of aluminum bats is the requirement that the elastic deflection not be accompanied by any plastic deformation. Plastic deflection lessens the power transfer to a ball and leaves the bat permanently dented. Thus, aluminum bat design is driven by the elastic and plastic deformation characteristics of aluminum. For example, when the tubular wall is too thin, a desirable large amount of elastic deflection is achieved, but with unwanted permanent plastic deformation. On the other hand, when the aluminum tubular wall is too thick, the bat may be too stiff to elastically deflect appreciably. In this case, the bat responds with relatively little spring, resulting in lower power transfer.

To provide for greater "spring," tubular bats using other materials, such as titanium, have been developed. Titanium is a high-strength material permitting thin bat frame walls which provide a substantial elastic deflection without plastic deformation. Such bats provide excellent spring-like response and power transfer to a batted ball. However, the material cost and difficulty of working titanium result in a high consumer cost.

The prior art also includes tubular bats using inserts. While most often inserts are used for vibration deadening purposes, U.S. Pat. No. 3,963,239 of Fujii discloses a metallic bat frame with a large-diameter impact portion receiving an insert to adjust the weight and improve the "repelling action" of the bat. Fujii teaches an insert in tight abutment within the tubular frame, so that the insert is fixed relative to the frame. The engagement is improved by forcing the insert into the tapered intermediate portion of the bat and/or by gluing the insert within the frame. The tightly-fitted Fujii insert simply acts to thicken the wall of the impact portion of the bat.

In light of the shortcomings of the prior art, it is an objective of the present invention to provide an improved bat.

It is another objective of this invention to provide a bat that increases the power transferred from the bat to a batted ball.

It is yet another objective of this invention to provide a simple construction for a tubular bat with an insert.

In accordance with a preferred embodiment of the present invention, a tubular aluminum bat frame is provided with a large-diameter impact portion, an intermediate tapering portion, and a small-diameter handle portion. A tubular insert is suspended within the impact portion by interference fits at each insert end. A first interference fit is achieved by forcing the first end of the insert into the tapering portion of the bat frame. The second interference-fit is then formed by curling the end of the impact portion over upon the second end of the insert. A gap exists along the length of the suspended insert separating the insert from the interior of the impact portion. The gap is filled with grease to facilitate relative movement between the insert and the tubular frame when a ball is batted.

The foregoing and additional features and advantages of the present invention will be more readily apparent from the following detailed description, which proceeds with reference to the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 shows a sectional view through the center of a softball bat in accordance with one aspect of this invention.

FIG. 2 is a magnified cutaway view of the bat of FIG. 1.

FIG. 3 is a sectional view taken along line 3—3 of FIG. 2.

DETAILED DESCRIPTION

Referring to FIG. 1, a softball bat 10, according to one embodiment of the present invention, has a tubular aluminum frame 11 with a relatively large-diameter impact portion 12, an intermediate tapering portion 14, and a relatively small-diameter handle portion 16.

To provide for an improved impact response yielding a better transfer of power from the bat to a batted ball, a tubular insert 18 is suspended within the impact portion 12 of the tubular frame. The tubular insert is a hollow tube of an outer diameter slightly less than the inner diameter of the tubular frame impact portion 12. A first end 20 of the tubular insert 18 is inserted through the impact portion 12 to be forcefully lodged in abutment with the diametrically narrowing interior wall of the tapering portion 14, thus forming a first interference fit. A second end 22 of the tubular insert 18 is spaced inwardly from the top end of the impact portion 12 when the tubular insert 18 is secured in the first interference fit. A second interference fit is created at the insert second end 22 by curling the topmost portion of the impact portion over upon the insert second end 22. The curled-over portion forms a reduced-diameter head portion 24 of the tubular frame 11.

Because the outer diameter of the insert 18 is slightly less than the inner diameter of the tubular frame impact portion 12, the suspended insert 18 contacts the tubular frame only at the interference fits of the first and second insert ends 20, 22. A narrow, uniform gap 26 exists between the insert 18 and the inner wall of the impact portion 12. The gap extends uniformly around the insert (see FIG. 3) and along the length of the insert between the first and second ends 20, 22 thereof.

As best seen in FIG. 2, the gap 26 is filled with a lubricant, such as grease. The grease is brought within the gap 26 by coating the insert 18 with grease before the insert is inserted into the tubular frame 11. Once the insert 18 is secured between the first and second interference fits, the lubricant-filled gap 26 is effectively sealed by the first and second interference fits.

The operation of the softball bat of the illustrated embodiment is designed for an improved transfer of power to a batted ball. Specifically, the bat 10 responds to the impact with a ball by providing a large elastic deflection, which rebounds with a large force in a short amount of time.

The tubular frame 11 with the suspended insert 18 attached at both ends to the tubular frame 11 yields a mechanical system with characteristics similar to a leaf spring. When the bat 10 strikes a ball on the impact portion 12, the impact portion 12 wall deflects inwardly through the grease-filled gap 26 to load and inwardly deflect the underlying insert wall. The deflection of the impact portion 12 can be considered as generally arcuate. Accordingly, the insert 18 deflects arcuately to cradle the arcuate deflection of the impact portion 12.

Because the insert 18 arcuate cradles the impact portion 12 arcuate, the insert 18 arcuate has a radius of curvature greater than the impact portion 12 arcuate. Because the insert 18 is fixed within the tubular frame at the insert ends 20, 22, the greater radius of curvature of the insert deflection causes the insert 18 to be stretched, as well as bent, around the deflection of the impact portion 12. Therefore, the insert 18 undergoes substantial tensile, as well as bending stress when a ball is batted.

The leaf-spring-like attachment of the insert 18 within the impact portion 12 provides a rebound to yield improved power transmission to the ball. The bending stresses are released as the walls of the impact portion 12 and the insert 18 rebound into the unloaded state. The tensile loading of the underlying insert wall is released simultaneously, adding "snap" which increases the force and velocity of the rebound. Accordingly, the extra snap owing to the leaf-spring-like suspension of the insert 18 within the tubular frame yields an improved transfer of power to the batted ball, and a heightened "slugging" capacity for the bat.

The grease permits relative movement between the impact portion 12 and the insert 18, so that the insert can independently stretch around the deflection of the impact portion 12. The sealed condition of the grease within the gap offers another advantage. The impact with a ball may occur so rapidly that the grease cannot appreciably flow. Rather, the grease hydrostatically supports the wall of the impact portion away from the insert. In this case, a substantial layer of grease is maintained between the impact portion and the insert, facilitating the movement of the insert relative to the impact portion. In another aspect, any flow of the grease that does occur during impact serves to distribute the force of impact over an expanded area of the impact portion 12. The distribution of the impact stress permits a thinner-walled impact portion because high stress concentrations causing plastic deformation are not likely to occur.

In a preferred embodiment, both the tubular frame and the insert are made of aluminum. An exemplary construction of the bat has the tubular frame 11 swaged from a constant-diameter aluminum tube to yield an integral, weld-free frame. Such swaging results in a tubular frame with thinner walls at the impact portion 10 and thicker walls at the handle portion 16. While swaging is used to produce the tubular frame 11 of the illustrated embodiment, it shall be understood that other methods of manufacturing the tubular frame may work equally as well.

Using aluminum of 80,000 pounds/inch^2 yield strength, an excellent batting response is achieved when the impact portion 12 is about 13 inches long with a wall thickness of 0.058 inch. An insert 18 slightly shorter than the impact portion 12 and having a wall thickness of 0.048 inch is inserted into the impact portion 12. The outer diameter of the insert is chosen so that the gap between the outer surface of the insert 18 and the inner surface of the impact portion 12 is about 0.007 inch.

While such dimensions yield excellent results, it is to be understood that they are exemplary only, and that many permutations of bat frame, insert, and gap dimensions will work equally as well. All permutations of component dimensions and configurations fall within the scope of the present invention.

Further describing a preferred construction, the insert 18 is coated with the lubricant before being inserted into the tubular frame 11. The first end 20 of the insert 18 is forcefully inserted into the tapering portion to achieve a tight interference fit. Plastic deformation of the aluminum insert at the interference fit increases the tightness of the attachment and the seal. The second interference fit is then obtained within a frame head portion 24, which is formed by curling the topmost end of the impact portion 12 over upon the insert second end 22. It has been found that a tight fit is achieved by curling in a one-half-inch radius forcefully enough to cause some plastic deformation in the insert second end 22. The curling may be facilitated by locally heating the end of the impact portion.

It should be understood that the foregoing is exemplary only, and that equally good results can be achieved without heating, curling, or plastic deformation of the insert ends. For instance, the head portion 24 of the frame could be pre-formed and threaded into the top of the impact portion 12. In this case, the head portion 24 may be threaded to impinge tightly upon the insert second end 22, to create the interference fit.

The interference fits of the illustrated embodiment offer excellent performance and are advantageous in the simplicity of design and manufacture (notably in the absence of any required welding). However, it is to be understood that welding or other fasteners may also be used. For instance, additional friction-improving devices may be used at the interference fits of the inserts and the tubular frame 11. Alternatively, adhesives or mechanical fasteners for joining the insert ends to the tubular frame may be used. Any fastener may also serve the purpose of sealing the lubricant within the gap 26. Any attachment mechanism or fastener maintaining the leaf-spring-like suspension falls within the scope of the present invention.

While the present embodiment utilizes aluminum for the frame and the insert, it should be understood that many other materials will perform equally well with the present invention. For instance, at a slightly higher cost, titanium could be used as insert material with excellent results. A titanium insert is advantageous owing to its excellent impact response characteristics. In addition, because the insert is a hollow tube, the machining and cold working problems associated with titanium are minimized. The titanium insert provides a bat with an superb impact response, but at a cost vastly reduced from that of a solid titanium bat.

Furthermore, where cost is less a consideration, a titanium insert may be used within a titanium bat with outstanding results. It should be understood that various other metals, composite materials, plastics, and other materials may likewise perform equally as well with the present invention.

Many types of lubrication may be utilized with bats of the present invention. Varying the viscosity of the lubricant may modify the feel and response of such bats. In a preferred embodiment, a heavy grade of grease is used to accentuate the hydro-static effect of the grease during impact. Synthetic lubricants may be used as well as petroleum-based greases and oils. Equally good results may be also obtained from the use of lubricants such as Teflon TM. Moreover, insert and bat frame materials which are themselves slippery so as to permit the independent movement of insert and frame may work equally as well. Indeed, lubricant may be omitted entirely, so long as the resulting arrangement permits independent movement of insert and bat frame.

It will be recognized that the lubricant is a plastically deformable material. Plastic deformation of this material is restored by action of the bat frame and the insert. Certain advantages of the present invention can be achieved by substituting any plastically deformable material in the gap **26**, irrespective of whether it is a lubricant.

In yet another embodiment of the invention, positive attachments of the insert **18** within the frame **11** may be dispensed with altogether. In this case, the insert would "float" on the layer of lubricant. An impact with a ball will cause the frame to deflect, thereby creating interference attachments for the insert **18** during impact. The swing of the bat during impact may tend to lodge the insert **18** in the end of the frame, contributing to an attachment. A bat with an insert held in this manner may respond much like a bat with an insert held at two interference fits. Furthermore, this alternative embodiment will also perform well when the lubricant is omitted.

In view of the many possible embodiments to which the principles of the present invention may be put, it should be recognized that the detailed embodiment is illustrative only and should not be taken as limiting the scope of the invention. Rather, I claim as my invention all such embodiments as may come within the scope and spirit of the following claims and equivalents thereto.

I claim:

1. A bat, comprising:

a hollow tubular bat frame having a circular cross-section; and

an insert positioned within the frame, the insert having a circular cross-section, the insert having first and second ends adjoining the tubular frame, the insert being separated from the tubular frame by a gap forming at least part of an annular shape along a central portion between said first and second ends, the frame elastically deflectable across the gap to operably engage the insert along a portion of the insert between the insert first and second ends.

2. A bat according to claim **1** in which the insert is suspended within the frame and is secured thereto at said first and second ends.

3. A bat according to claim **2**, wherein the insert is rigid and the gap is filled with a lubricant to facilitate the relative movement between the insert and the tubular frame when a ball is struck.

4. A bat according to claim **3**, wherein the tubular frame has a small-diameter handle portion, an intermediate tapering portion, and a large diameter impact portion, and the insert is suspended within the frame impact portion.

5. A bat according to claim **4**, wherein the insert is tubular.

6. A bat according to claim **5**, wherein the gap thickness is small relative to the thickness of the impact portion wall and the insert wall.

7. A bat according to claim **6**, with the tubular frame further having a reduced-diameter head portion atop the impact portion; and

the first insert end being secured within the frame by a first interference fit within the tapering portion of the frame, and the second insert end being secured with the frame by a second interference fit within the head portion of the bat.

8. A bat according to claim **7**, wherein the interference fits seal the lubricant within the gap.

9. A bat according to claim **8**, wherein the insert is made of aluminum.

10. A bat according to claim **8**, wherein the tubular frame is made of aluminum.

11. A bat according to claim **8**, wherein the insert is made of titanium.

12. A bat according to claim **8**, wherein the insert is made of composite material.

13. A bat according to claim **8**, wherein the insert is made of steel.

14. A bat according to claim **10**, wherein the lubricant is grease.

15. In a hollow bat having a small-diameter handle portion and a large-diameter impact portion, an improvement comprising an internal structural insert defining an annular gap with an inside wall of the impact portion of the bat and the impact portion elastically deflectable to close a portion of the annular gap and operably engage the insert.

16. The bat of claim **15** in which the gap is filled with a plastically deformable substance.

17. A bat, comprising:

a hollow tubular frame having a small diameter handle portion, an intermediate tapering portion, a large diameter impact portion, and a reduced-diameter head portion;

a tubular insert adapted to be suspended within the frame impact portion;

a first end of the tubular insert being received into the tapering portion and secured therein by a first interference fit;

a second end of the tubular insert being received by the head portion of the frame and secured therein by a second interference fit;

a gap separating the insert from the tubular frame, the gap extending from the first interference fit to the second interference fit, the gap being filled with grease to facilitate relative movement between the tubular frame and the insert when the bat strikes a ball; and

the insert and the frame being made of aluminum.

18. A bat, comprising:

a hollow tubular bat frame having a small-diameter handle portion and a large-diameter impact portion having a circular cross-section with an inner and outer diameter;

at least one insert having a substantially circular cross-section with an outer diameter less than the inner diameter of the frame impact portion, the insert being held within the impact portion; and

the impact portion being inwardly elastically deflectable such to establish a tight interference fit between the insert and the impact portion.

* * * * *

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